

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

BERT TACKETT,

Petitioner,

v.

CIVIL ACTION NO. 2:23-cv-00303
(Criminal No. 2:21-cr-00097)

UNITED STATES OF AMERICA,

Respondent.

ORDER

This action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of proposed findings of fact and recommendations for disposition pursuant to 28 U.S.C. § 636. On May 14, 2024, Magistrate Judge Eifert submitted her Proposed Findings & Recommendations (“PF&R”), [ECF No. 75], and recommended that the court (1) grant Respondent’s Motion to Dismiss, [ECF No. 71], (2) deny Petitioner’s 28 U.S.C. § 2255 motion, [ECF No. 61], and (3) dismiss with prejudice this action and remove it from the court’s docket. Objections to the PF&R were due by May 31, 2024. Neither party timely filed objections to the PF&R or sought an extension of time to do so.

A district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). This court is not, however, required to review, under a de

novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Because the parties have not filed objections in this case, the court adopts and incorporates herein the PF&R and orders judgment consistent therewith. The court (1) **GRANTS** Respondent's Motion to Dismiss, [ECF No. 71], (2) **DENIES** Petitioner's § 2255 motion, [ECF No. 61], and **DISMISSES with prejudice** this matter and removes it from the court's docket.

The court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683–84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: July 2, 2024

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JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE